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PATENT APPLICATION

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#17  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
: Examiner: Ram R. Shukla  
AKIHIRO UMEZAWA, ET AL. )  
: Group Art Unit: 1632  
Application No.: 09/749,728 )  
: Filed: December 28, 2000 )  
: For: THE CELL HAVING THE )  
: POTENTIALITY OF )  
: DIFFERENTIATION INTO )  
: CARDIOMYOCYTES )  
: September 9, 2002

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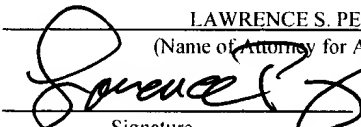
Commissioner for Patents  
Washington, D.C. 20231

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

Applicants respond to the Official Action dated August 7, 2002 (Paper No. 15) in the above-identified application, as follows.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on

September 9, 2002  
(Date of Deposit)  
LAWRENCE S. PERRY  
(Name of Attorney for Applicant)  
  
September 9, 2002  
Signature Date of Signature

### REMARKS

In the outstanding Office Action, the Examiner required that Applicants elect for prosecution one of the inventions (Groups I-XII) noted on pages 2-3 of the Office Action. The Examiner further notes the groups include claims directed towards distinct species of cells and all markers, mammals, etc. and required that for any elected group, a specie be identified for search.

Applicants respectfully traverse the Requirement, in part. In this connection, Applicants hereby request that the groups be reformulated in order to rejoin Group I (claims 1-46 and 76-77) with Group VI (claims 78-79) since they are identically classified (both class and subclass), and because Group VI is simply a use of the cell in Group I.

Similarly, Applicants request that Group II (claims 47-60) and Group III (claims 61-63) be rejoined, since they too are identically classified.

In any event, Applicants wish to point out to the Examiner the Commissioner's Official Gazette Notice of March 4, 1996 "Guidance on Treatment of Product and Process Claims" which addresses the issue of processes "limited to making or using a nonobvious product" and stated that claims to the nonelected process should be rejoined when a product claim is found allowable and the withdrawn process contains all the limitations of an allowed product claim.

Meanwhile, in response, Applicants hereby elect to prosecute the invention of Group I, namely Claims 1-46 and 76-77.

The Examiner also required that for any elected group, Applicants also select a species for search. See from page 3, line 10 to page 4, line 7 of the Office Action.

In response, Applicants hereby select a cell type of cardimyocyte (claim 5), the mammal human (claim 24), the factor cytokine (claim 30), and the factor subspecies midkine (claim 31).

With regard to the cell subspecies requested for claim 15, Applicants hereby select CD14-negative. However, Applicants prefer to conduct the search based on the cell subspecies recited in claim 8, rather than claim 15.

Entry hereof is earnestly solicited.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,



Attorney for Applicants

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